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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JAMES ALEXANDER GUERRA
12 OVERTON FOR JULIA RACHEL
OVERTON,

13 Plaintiff,

14 vs.

15 JOEL R. WOHLFEIL; DAVID B.
16 OBERHOLTZER; BROWDER WILLIS,
III; PAUL STACEY; TERRENCE
CHUCAS; GEORGIA MANSURY,

17 Defendants.

CASE NO. 10cv1378-WQH-BGS
ORDER

18 HAYES, Judge:

19 The matter before the Court is the Motion for Leave to Proceed in Forma Pauperis.
20 (Doc. # 2).

21 **BACKGROUND**

22 On June 30, 2010, Plaintiff James Alexander Guerra Overton, a nonprisoner proceeding
23 pro se, initiated this action by “filing a complaint on behalf of my daughter Julia Rachel
24 Overton.” (Doc. # 1 at 1). On June 30, 2010, Plaintiff filed the Motion for Leave to Proceed
In Forma Pauperis. (Doc. # 2).

25 **ANALYSIS**

26 **I. Motion to Proceed In Forma Pauperis**

27 All parties instituting any civil action, suit or proceeding in a district court of the United
28 States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28

1 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee
 2 only if the plaintiff is granted leave to proceed in forma pauperis pursuant to 28 U.S.C.
 3 § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999).

4 In his affidavit accompanying the Motion, Plaintiff states that he is self-employed with
 5 an income of \$180 per month, and he has no bank accounts and no assets of value. (Doc. # 2
 6 at 2-3). Plaintiff states that he pays \$72 per month in child support and he owes \$7,500 on an
 7 automobile loan. *Id.* The Court has reviewed Plaintiff's affidavit and finds it is sufficient to
 8 show that Plaintiff is unable to pay the fees required to maintain this action. The Court grants
 9 the Motion to Proceed In Forma Pauperis pursuant to 28 U.S.C. § 1915(a).

10 **II. Initial Screening Pursuant to 28 U.S.C. § 1915(e)(2)(b)**


11 After granting In Forma Pauperis status, the Court must dismiss the case sua sponte if
 12 "the action ... is frivolous or ... fails to state a claim on which relief may be granted." 28
 13 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001).

14 "[A] parent or guardian cannot bring an action on behalf of a minor child without
 15 retaining a lawyer." *Johns v. County of San Diego*, 114 F.3d 874, 877 (9th Cir. 1997).
 16 Plaintiff purports to bring this action on behalf of his minor daughter. (Doc. # 1 at 2 ("I am
 17 James Alexander Guerra Overton ... filing for my daughter Julia Rachel Overton, DOB
 18 December 15, 2003.")). Plaintiff is appearing pro se and has not indicated that he is a lawyer.
 19 Accordingly, the Complaint must be dismissed.

20 **CONCLUSION**

21 IT IS HEREBY ORDERED that the Motion for Leave to Proceed in Formal Pauperis
 22 (Doc. # 2) is GRANTED. The Complaint is DISMISSED without prejudice. The Clerk of the
 23 Court shall close this case.

24
 25 DATED: July 7, 2010

26 
 27 **WILLIAM Q. HAYES**
 28 United States District Judge